

Docket No.: C1037.70013US00
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Robert L. Bratzler et al.
Serial No.: 09/776,479
Confirmation No.: 7139
Issued: September 8, 2009
Patent No.: 7,585,847
For: IMMUNOSTIMULATORY NUCLEIC ACIDS FOR THE
TREATMENT OF ASTHMA AND ALLERGY
Examiner: N. M. Minnifield
Art Unit: 1645

Certificate of Electronic Filing Under 37 CFR 1.8

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: May 19, 2010

Electronic Signature for Nicole Millette Lapomardo: /Nicole Millette Lapomardo/

Mail Stop Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

Applicant respectfully requests reconsideration of the patent term adjustment (PTA) for U.S. Patent No. 7585847 issued on September 8, 2009, as indicated on the Decision on Request for Recalculation of Patent Term Adjustment in View of Wyeth and Notice of Intent to Issue Certificate of Correction, dated April 21, 2010 (hereinafter, the “April 21, 2010 Decision”). The April 21, 2010 Decision sets forth a PTA of 993 days. Applicant considers the correct PTA to be 647 days. Applicant therefore requests reconsideration of the PTA in the April 21, 2010 Decision.

Applicant previously submitted a Request for Reconsideration of Patent Term Adjustment Under 37 C.F.R. 1.705(D) on November 6, 2009 which included a statement of the facts and the required fee set forth in 37 C.F.R. 1.18(e). Having not received a decision on the November 6, 2009 Request, Applicant then proceeded to file a Request for Patent Term Adjustment Recalculation in View of Wyeth on March 5, 2010, within 6 months of the issue date of U.S.

Patent No. 7585847. Applicant subsequently received a Decision on Request for Reconsideration of Patent Term Adjustment and Notice of Intent to Issue Certificate of Correction, dated March 15, 2010 (hereinafter, the “March 15, 2010 Decision”). The March 15, 2010 Decision agreed with, and thereby granted, Applicant’s proposed PTA of 647 days. Applicant also received the corresponding Certificate of Correction that reflects a PTA of 647 days.

Applicant also received the April 21, 2010 Decision which indicates a PTA of 993 days, which is in excess of the 647 days Applicant previously requested and the Patent Office previously granted. Applicant’s representative (MaryDilys Anderson) discussed the April 21, 2010 Decision with Kery Fries in a phone call on May 3, 2010 and was informed that the increase in PTA was a result of two PTA determinations being conducted at the Patent Office, one of which was a computer-generated determination that was performed following a determination carried out by Office personnel. Mr. Fries indicated that the Patent Office was aware that a later computer-generated PTA decision could be incorrect if it was preceded by a PTA decision rendered by Office personnel, as was the case here. Mr. Fries further indicated that Applicant should file a request for reconsideration of the April 19, 2010 Decision outlining these facts, and further requesting a waiver of the required fee under 37 C.F.R. 1.18(e).

Applicant can provide no explanation for the difference between its proposed PTA (647 days) and the April 19, 2010 Decision PTA (993 days) because Applicant does not understand the methodology that resulted in this latter PTA nor does the April 19, 2010 Decision set forth such methodology.

The correct PTA of 647 days is the net USPTO delay of 1330 days minus the apparent net Applicant delay of 683 days.

A terminal disclaimer was not filed in U.S. Patent No. 7585847 and the patent is not subject to a terminal disclaimer.

Applicant requests waiver of the fee required under 37 C.F.R. 1.18(e) as per the discussion with Mr. Fries. However, in the event that such waiver is not granted, Applicant authorizes the Office to charge the \$200.00 fee as set forth in 37 CFR § 1.18(e) to Deposit Account No. 23/2825. If there is any additional fee occasioned by this Request that is not covered by the enclosed fee, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

/Maria A. Trevisan/
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